

ENTERED

December 06, 2017

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

JAMES ARTHUR MAYBERRY, JR., §
TDCJ #01873709, §
§
Petitioner, §
VS. § CIVIL ACTION NO. 3:15-CV-185
§
§
LORIE DAVIS, Director, Texas §
Department of Criminal Justice, §
Correctional Institutions Division, §
§
§
Respondent. §

ORDER OF DISMISSAL

Petitioner James Arthur Mayberry, Jr. (TDCJ #01873709) has filed a petition for a writ of habeas corpus claiming that he was improperly denied release to mandatory supervision. The Respondent has filed a motion for summary judgment alleging that none of Mayberry's stated grounds for habeas relief has been exhausted in the Texas state courts. Mayberry has not responded. The Court agrees with the Respondent and will dismiss Mayberry's petition without prejudice.

Mayberry pled guilty to assault/family violence in Tarrant County in 2013 and received a five-year sentence (Dkt. 12-1; Dkt. 1 at p. 2). While he was incarcerated in the Wayne Scott Unit in Brazoria County, he was denied release to mandatory supervision (Dkt. 1 at p. 6). Mayberry did not file a state habeas petition, or any other request for relief in state court, challenging the denial of mandatory supervision release (Dkt. 12-2). The points raised in his federal habeas petition are therefore not properly exhausted. A

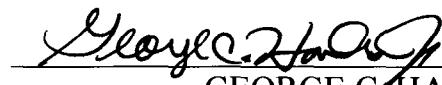
state prisoner seeking federal habeas relief must exhaust all claims in state court first.

Mercadel v. Cain, 179 F.3d 271, 275 (5th Cir. 1999). A claim is not exhausted unless the habeas petitioner provides the highest state court with a fair opportunity to pass upon the claim, which in turn requires that the petitioner present his claims before the state courts in a procedurally proper manner according to the rules of the state courts. *Id.* Mayberry's petition must be dismissed.¹

The Respondent's motion for summary judgment (Dkt. 12) is **GRANTED**. This habeas petition is **DISMISSED** without prejudice. A certificate of appealability is **DENIED**. This is a **FINAL JUDGMENT**.

The Clerk will provide a copy of this Order to the parties.

SIGNED at Galveston, Texas on December 5, 2017.


GEORGE C. HANKS, JR.
UNITED STATES DISTRICT JUDGE

¹ The Court further notes that it cannot locate Mayberry on the Texas Department of Criminal Justice website. If Mayberry has been released, his request for mandatory supervision release is now moot, and the Court lacks jurisdiction over this petition.